

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 01-0309P

Sales and Use Tax

Calendar Years 1997, 1998, and 1999

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ISSUE(S)

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is a manufacturer of plastic and aluminum products. Taxpayer was previously audited on April 6, 1990. At audit, it was determined that the taxpayer failed to self assess and remit use tax for clearly taxable items, some of which are similar to those assessed in a prior audit. Taxpayer failed to remit sales tax in February and March 1999 and an adjustment was made for that period. Taxpayer had sales tax credits that it did not deduct in 1998 that reduced the sales tax assessment.

I. **Tax Administration** – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that the errors were not intentional and represent relatively few transactions. Taxpayer states it has implemented procedures to guard against these types of errors from occurring in the future.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence

shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The taxpayer had no use tax accrual system in place thereby failing to remit one hundred percent (100%) of the use tax due and has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer’s protest is denied.